

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CHEWY, INC.

Plaintiff,

CIVIL CASE MANAGEMENT PLAN
(JUDGE RAKOFF)

-v-

INTERNATIONAL BUSINESS MACHINES
CORPORATION

Defendant.

1:21-cv-1319 (JSR)

This Court requires that this case shall be ready for trial on

~~9-22-2021~~ 11/27/21

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. The case is to be tried to a jury.
- B. Joinder of additional parties must be accomplished by May 17, 2021.
- C. Amended pleadings may be filed without leave of Court until May 17, 2021.
- D. Discovery (in addition to the disclosures required by Fed. R. Civ. P. 26(a)):

1. Documents. First request for production of documents, if any, must be served by ~~May 17, 2021~~ 4/26/21. Further document requests may be served as required, but no document request may be served later than 30 days prior to the date of the close of discovery as set forth in item 6 below.

2. Interrogatories. Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York must be served by ~~May 17, 2021~~ 4/26/21. No other interrogatories are permitted except upon prior express permission of Judge Rakoff. No Rule 33.3(a) interrogatories need be served with respect to disclosures automatically required by Fed. R. Civ. P. 26(a).

2.1. Patent Disclosures. If a claim for patent infringement is asserted in this case, the party asserting infringement shall serve its Disclosure of Asserted Claims and Infringement Contentions under Local Patent Rule 6 by May 21, 2021; the party opposing a claim of infringement shall serve its Invalidity Contentions under Local Patent Rule 7 by June 7, 2021.

2.2. No later than June 9, 2021, the parties shall meet and confer to discuss narrowing the number of asserted claims and asserted prior art references.

2.3. Claim Construction. The parties shall exchange a list of patent claims terms to be construed by June 10, 2021. The parties shall exchange proposed constructions by June 17, 2021. The parties shall file a Joint Disputed Claim Terms Chart under Local Patent Rule 11 by June 22, 2021. The parties are to simultaneously file and serve opening claim construction briefs by July 2, 2021. The Court will hold a claim construction hearing as early as suits the Court's calendar after July 23, 2021. — 4 p.m.

2.4. No later than one week after the Court issues its Claim Construction Order, the parties shall meet and confer to discuss the final election of asserted claims and asserted prior art references.

3. Experts. Every party-proponent of a claim (including any counterclaim, cross-claim, or third-party claim) that intends to offer expert testimony in respect of such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by July 30, 2021. Every party-opponent of such claim that intends to offer expert testimony in opposition to such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by August 13, 2021. No expert testimony (whether designated as "rebuttal" or otherwise) will be permitted by other experts or beyond the scope of the opinions covered by the aforesaid disclosures except upon prior express permission of the Court, application for which must be made no later than 10 days after the date specified in the immediately preceding sentence. All experts may be deposed, but such depositions must occur within the time limit for all depositions set forth below.

4. Depositions. All depositions (including any expert depositions, see item 3 above) must be completed by August 27, 2021. Unless counsel agree otherwise or the Court so orders, depositions shall not commence until all parties have completed the initial disclosures required by Fed. R. Civ. P. 26(a)(1) or until four weeks from the date of this Order, whichever is earlier. Depositions shall proceed concurrently, with no party having priority, and no deposition shall extend beyond one business day without prior leave of the Court.

5. Requests to Admit. Requests to Admit, if any, must be served by July 28, 2021.

5.1. Opinion of Counsel. A party who elects to rely on an opinion of counsel as part of a defense to a claim of willful infringement or inducement of infringement, or that a case is exceptional, must produce relevant documents required under Local Patent Rule 40 by July 23, 2021.

6. All discovery is to be completed by August 27, 2021. Interim deadlines for items 1–5 above may be extended by the parties on consent without application to the Court, provided the parties are certain they can still meet the discovery completion date set forth in this paragraph. The discovery completion date may be adjourned only upon a showing to the Court of extraordinary circumstances, and may not be extended on consent.

E. Post-discovery summary judgment motions in the form prescribed by the Court's Individual Rules of Practice may be brought on without further consultation with the Court provided that a Notice of any such motion, in the form specified in the Court's Individual Rules

The parties are to file answers to the questions by July 16, 2021.

8/16/21

9/8/21

9/25/21

8/22

9/29/21

10/29/21 11/5/21 10/15/21

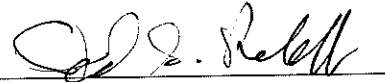
of Practice, is filed no later than one week following the close-of-discovery date (item D-6 above) and provided that the moving papers are served by September 1, 2021, answering papers by September 14, 2021, and reply papers by September 22, 2021. The deadlines for Daubert challenges shall conform with the schedule specified in the immediately preceding sentence. Each party must file its respective papers with the Clerk of the Court on the same date that such papers are served. Additionally, on the same date that any papers are served and filed, counsel filing and serving the papers must arrange to deliver courtesy non-electronic hard copies to the Courthouse for delivery to Chambers.

E(1). The parties shall contact the Court to schedule a mediation or settlement conference by one week after the Court issues its Claim Construction Order. *et 4 p.m.*

F. A final pre-trial conference, as well as oral argument on any post-discovery summary judgment motions, shall be held on 11/15/21 [date to be inserted by the Court], at which time the Court shall set a firm trial date. The timing and other requirements for the Joint Pretrial Order and/or other pre-trial submissions shall be governed by the Court's Individual Rules of Practice.

G. All motions and applications shall be governed by Judge Rakoff's Individual Rules of Practice. Counsel shall promptly familiarize themselves with all of the Court's Individual Rules, as well as with the Local Rules for the United States District Court for the Southern District of New York.

SO ORDERED.


JED S. RAKOFF
U.S.D.J.

DATED: New York, New York
4/22/21